

ADDENDUM TO THE FINAL STATEMENT OF REASONS

This addendum is necessary to demonstrate and clarify some rulemaking file concerns identified by Office of Administrative Law.

a) Regulations Text Non-Substantive Changes Post-15-day Renotice

The following non-substantive modifications have been made to the regulation text while under review with Office of Administrative Law for consistency and clarity:

Page 4, Section 84002: Updated references to match WestLaw's on-line publication. No changes to the regulation text.

Page 5, Section 84061(f)(3): The "(A)" outline reference was removed because does not exist. No changes to the regulation text.

Page 6, Section 84061(i)(2)(E): Added "Welfare and Institutions Code Section" to make clear the 602 petition. No further changes to the regulation text were made.

Page 21, Section 86065: Separated "Handbook" from outline subsections (2) - (7) and placed below to be consistent with other Handbook references as presented in the regulation text. There are no changes to the regulation text.

b) Incorporation by Reference

The 15-day Renotice letter with attachments, which includes a summary of objections or recommendations from the 45-day Public Notice period *and the Department's responses as part of the attached Addendum to the Initial Statement of Reasons*, is incorporated, herein, by reference in its entirety and available electronically at <http://www.cdss.ca.gov/inforesources/Post-Hearing-Regulations/ORD-No-0316-05>.

c) Specific Purpose of the Regulations and Factual Basis for Determination that Regulations Are Necessary

Sections 84061(i) through Handbook Section 84061(i)(6)

Specific Purpose:

This regulation adds and clarifies new requirements for the reporting of incidents concerning children residing in group homes involving contact with law enforcement as mandated in Health and Safety Code section 1538.7. The reference note is amended to include Health and Safety Code section 1538.7. Finally, an example is placed in the handbook.

Factual Basis:

This regulation is necessary to incorporate new reporting mandates in Health and Safety Code section 1538.7(a) into existing group home regulations detailing incidents which licensees are required to report, as well as to clarify areas that the statute left open to interpretation for the benefit of both the licensees who must comply with this law and CDSS employees who must enforce it. Although Health and Safety Code section 1538.7(a) is repeated in part in Section 84061(i), the clarifications provided, as well as the need to present the requirements in their full context for the sake of clarity, ensure that the regulations does not needlessly violate the non-duplication standard in Title 1, California Code of Regulations.

While statute requires that initial reports on incidents entailing law enforcement contact with a child residing in the facility be made "upon the occurrence," this regulation interprets this term, following standard CDSS practice, to mean no later than the next business day. The requirement in Health and Safety Code section 1538.7(a) that licensees provide a follow-up report for each incident "at least every six months," is interpreted to require an individual report within six months of the incident's occurrence, rather than an aggregate report at six month intervals as the statutory wording could be read to allow. Further, the regulations specify that the follow-up report could be made at any time within six months of each incident, even immediately, if all outcomes and required information are known.

Health and Safety Code section 1538.7(a) requires that incident reports include several data elements, but tie the collection of these elements to the six month follow-up reports. This regulation interprets the statute as requiring those data elements known to the licensee at the time of making the initial report to be included at that time, and that such information need only be provided in the follow-up report if it has changed. In order to prevent unnecessary duplication, this regulation also clarifies that reports made in order to comply with the provisions of Health and Safety Code section 1538.7(a) satisfy any other existing regulatory reporting requirement so long as all required information is provided.

In requiring that group homes and other specified facilities report incidents concerning a child in the facility involving contact with law enforcement, Health and Safety Code section 1538.7 directs that the follow-up report include "whether the incident involved an alleged violation of any crime described in Section 602 of the Welfare and Institutions Code by a child residing in the facility." Welfare and Institutions Code section 602, however, does not describe any crimes, but rather states that children under 18 years of age who violate any law, other than an age-based curfew law, are within the jurisdiction of the juvenile court, which may adjudicate them as wards of the court, unless they are 14 years of age or older and have committed murder or specified sex offenses, in which case they shall be prosecuted under the general law in a court of criminal (not juvenile) jurisdiction. Thus, the regulations further clarify that providers must include in the follow-up report whether the incident involved an alleged violation of any crime, other than an age-based curfew law, by a child residing in the facility, as referring to Welfare and Institutions Code section 602 does not provide adequate direction.

The regulations and handbook further clarify that routine contact by probation officers supervising the placement of a child need not be reported, though action taken by a probation officer in response to a reportable incident should be reported as an outcome, if known. This distinction is necessary to make clear that incidents to be reported are those that get to the intent of AB 388 of minimizing interactions with the justice system that lead to delinquency petitions. Reporting regular interaction between probation officers and adjudicated dependents would lead to voluminous paperwork which, in addition to burdening licensees, would hinder CDSS' efforts to meet the objective of Health and Safety Code section 1538.7(b) of determining which facilities report a greater than average number of law enforcement contacts.

Final Modification:

In response to public comment, the Department has revised this section to clarify that incidents to be reported are those involving law enforcement contact with a child residing in the facility, as well as to require the use of form LIC 624-LE, or a report containing all the information in LIC 624-LE, for reportable incidents to ensure complete and consistent data collection. Additionally, a subsection has been added [Section 84061(i)(4)] to clarify that additional follow-up reports may be required in those instances when the Department determines that the reports submitted are incomplete, or when reportable outcomes occur after a follow-up report has been submitted. The previous Sections 84061(i)(4) and (5) have been renumbered accordingly. Section 84061(i)(6) renumbered from Section 84061(i)(5) and the associated Handbook that follows have been revised in response to public comment to further clarify the circumstances in which contact with probation officers does and does not constitute contact with law enforcement that must be reported.

Further support of purpose and necessity regarding LIC 624-LE components for contact information of facility as well as type of incident are as follows:

LIC 624-LE solicits information required for the Department to meet the data collection, reporting, identification and inspection mandates of Health and Safety Code section 1538.7. It also incorporates elements of LIC 624 (4/99), "Unusual Incident/Injury Report," so that licensees do not have to report the same incident twice in order to provide the Department with the information required by Health and Safety Code section 1538.7 and existing licensing regulations for reportable incidents. The form requests contact information so that the Department may take appropriate action in response to an incident if necessary, as well as to satisfy the requirement in Health and Safety Code section 1538.7 that the Department identify facilities that have reported a greater than average number of law enforcement contacts (as specified) and inspect those facilities at least once a year.

Health and Safety Code section 1536 requires the Department to annually publish information concerning each group home, transitional housing placement provider, community treatment facility, runaway and homeless youth shelter, or short-term residential therapeutic program, including the number, types, and outcomes of law enforcement contacts made by the facility staff or children, as reported pursuant to

subdivision (a) of Section 1538.7. Accordingly, the form contains options for the most common types of outcome. Reportable incident types were restructured from those contained on LIC 624 to remove redundancies, add common categories of incidents often involving law enforcement, and simplify the reporting of aggressive acts to improve the quality of data collected about incidents involving law enforcement contacts.

Section 86061(a)(7) through Handbook Section 86061(a)(7)(E)

Specific Purpose:

This regulation adds new requirements for the reporting of incidents concerning participants served by transitional housing placement programs involving contact with law enforcement as mandated in Health and Safety Code section 1538.7. The reference note is amended to include Health and Safety Code section 1538.7.

Factual Basis:

This regulation is necessary to incorporate new reporting mandates in Health and Safety Code section 1538.7(a) into existing transitional housing placement program regulations detailing incidents which licensees are required to report, as well as to clarify areas that the statute left open to interpretation for the benefit of both the licensees who must comply with this law and the CDSS employees who must enforce it.

Although Health and Safety Code section 1538.7(a) is repeated in part in Section 84061(i), the clarifications provided, as well as the need to present the requirements in their full context for the sake of clarity, ensure that the regulations does not needlessly violate the non-duplication standard in Title 1, California Code of Regulations.

While statute requires that initial reports on incidents entailing law enforcement contact with a child residing in the facility be made "upon the occurrence," this regulation interprets this term, following standard CDSS practice, to mean no later than the next business day. The requirement in Health and Safety Code section 1538.7(a) that licensees provide a follow-up report for each incident "at least every six months," is interpreted to require an individual report within six months of the incident's occurrence, rather than an aggregate report at six month intervals as the statutory wording could be read to allow. Further, the regulations specify that the follow-up report could be made at any time within six months of each incident, even immediately, if all outcomes and required information are known.

Health and Safety Code section 1538.7(a) requires that incident reports include several data elements, but tie the collection of these elements to the six month follow-up reports. This regulation interprets the statute as requiring those data elements known to the licensee at the time of making the initial report to be included at that time, and that such information need only be provided in the follow-up report if it has changed. In order to prevent unnecessary duplication, this regulation also clarifies that reports made in order to comply with the

provisions of Health and Safety Code section 1538.7(a) satisfy any other existing regulatory reporting requirement so long as all required information is provided.

In requiring that THPPs and other specified facilities report incidents concerning a child in the facility involving contact with law enforcement, Health and Safety Code section 1538.7 directs that the follow-up report include "whether the incident involved an alleged violation of any crime described in Section 602 of the Welfare and Institutions Code by a child residing in the facility." Welfare and Institutions Code section 602, however, does not describe any crimes, but rather states that children under 18 years of age who violate any law, other than an age-based curfew law, are within the jurisdiction of the juvenile court, which may adjudicate them as wards of the court, unless they are 14 years of age or older and have committed murder or specified sex offenses, in which case they shall be prosecuted under the general law in a court of criminal (not juvenile) jurisdiction. Thus, the regulations further clarify that providers must include in the follow-up report whether the incident involved an alleged violation of any crime, other than an age-based curfew law, by a child residing in the facility, as referring to Welfare and Institutions Code section 602 does not provide adequate direction.

Final Modification:

The section title above has been updated to accurately reflect the affected sections.

In response to public comment, the Department has revised this section to clarify that incidents to be reported are those involving law enforcement contact with a participant residing in the facility, as well as to require the use of form LIC 624-LE, or a report containing all the information required in LIC 624-LE, for reportable incidents to ensure complete and consistent data collection. Additionally, Subsection 86061(a)(7)(C) has been added to clarify that additional follow-up reports may be required in some instances if determined by the Department to be incomplete, or if reportable outcomes occur after the follow-up report has been submitted. The previous Subsection 86061(a)(7)(C) is renumbered to Subsection 86061(a)(7)(D).

Subsection 86061(a)(7)(E) and a Handbook section have been added to clarify that routine contact by probation officers supervising the placement of a participant need not be reported, though action taken by a probation officer in response to a reportable incident should be reported as an outcome, if known. This distinction is necessary to make clear that incidents to be reported are those that get to the intent of AB 388 of minimizing interactions with the justice system that lead to delinquency petitions. This regulation and Handbook section mirror in THPP regulations proposed regulations for group homes in Section 84061(i)(6), and should have been part of the initial filing.

Further support of purpose and necessity regarding LIC 624-LE components for contact information of facility as well as type of incident are as follows:

LIC 624-LE solicits information required for the Department to meet the data collection, reporting, identification and inspection mandates of Health and Safety Code section 1538.7. It also incorporates elements of LIC 624 (4/99), “Unusual Incident/Injury Report,” so that licensees do not have to report the same incident twice in order to provide the Department with the information required by Health and Safety Code section 1538.7 and existing licensing regulations for reportable incidents. The form requests contact information so that the Department may take appropriate action in response to an incident if necessary, as well as to satisfy the requirement in Health and Safety Code section 1538.7 that the Department identify facilities that have reported a greater than average number of law enforcement contacts (as specified) and inspect those facilities at least once a year.

Health and Safety Code section 1536 requires the Department to annually publish information concerning each group home, transitional housing placement provider, community treatment facility, runaway and homeless youth shelter, or short-term residential therapeutic program, including the number, types, and outcomes of law enforcement contacts made by the facility staff or children, as reported pursuant to subdivision (a) of Section 1538.7. Accordingly, the form contains options for the most common types of outcome. Reportable incident types were restructured from those contained on LIC 624 to remove redundancies, add common categories of incidents often involving law enforcement, and simplify the reporting of aggressive acts to improve the quality of data collected about incidents involving law enforcement contacts.